IN THE HIGH COURT OF UTTARANCHAL, NAINITAL.

No. 10-COURT ORDER WHETHER THE CASE IS

OR IS NOT APPROVED FOR REPORTING.

[Chapter VIII, Rule 32(2) (b)]

Criminal Jail Appeal No. 1853/2001

Harish @ Gudda Appellant.

Vs.

State Respondent.

Decided no 17-04-2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

(P.C.Verma, J.)

(B.C. Kandpal, J.)

Dated 17-04-2006

In the High Court of Uttaranchal, at Nainital.

Criminal Jail Appeal No. 1853/2001

Haris @ Gudda
S/o Herald Massi
R/o Moh. Lal Imali Parao
P.S. Tanakpur,
District U.S. Nagar ……..Appellant.

Versus

State of Uttaranchal Respondent.

Sri Pankaj Purohit, learned Amicus Curiae for the appellant.
Sri D.K. Sharma, learned G.A. for the State.

Coram: Hon'ble P.C. Verma, J.

Hon'ble B.C. Kandpal, J.

Dated: 17-04-2006

This criminal jail appeal has been preferred by appellant Haris @ Gudda against the judgment and order dated 9-10-2001, passed by Sessions Judge, Udham Singh Nagar, in Sessions Trial No. 353/1999 State Versus Harish @ Gudda, convicting the accused/appellant U/Ss 302, 307 and 452 I.P.C. and sentencing him to undergo imprisonment for life U/S 302 I.P.C.; five years' R.I. U/S 307 I.P.C. and one year's R.I. U/S 452 I.P.C. All the sentences were to run concurrently.

2. Brief facts of the case are that On 24-3-1992 at about 4-00 p.m. complainant Suresh Kumar lodged written report, Ext. Ka.1 at Police Station, Tanakpur with the allegations that he along with daughters Km. Madhu aged about 17 years, Km. Lata aged about 13 years and one another younger daughter, reside in Mohalla Lal Imali Parao Tanakpur, His neighbour accused Harish @ Gudda had evil eye towards his daughters and the complainant and his wife scolded him On 24-3-1992 at about 3-30 P.M. accused Harish suddenly came at the house of the complainant and took out a knife and started assaulting his wife and daughter Km. Madhu with intention to commit their murder. On hearing alarm of complainant, his uncle Pyare Lal and neighbour Ram Dayal

reached there. Thereupon the accused came out of the house with his knife in his hand. The accused also started assaulting Km. Lata, the another daughter of the complainant, who had returned from her school, with the knife, Looking the crowd of people assembled there, the accused ran towards the station with the knife. On the basis of written report, chick F.I.R., Kxt. Ka.8 was drawn at P.S. Tanakpur and case U/Ss 452/307 I.P.C. was registered against the accusd/appellant Harish @ Gudda.

3- The investigation of the case was stated by S.I. Umesh Chandra Pant. He reached at the spot and sent the injured to Tanakpur Hospital for medical treatment through C.P. Bhupendar Singh. Km. Lata succumbed to her injuries in the Hospital, hence the case was converted U/S 302 I.P.C. The Investigating Officer reached at the Hospital and performed inquest on the dead body of Km. Lata and prepared inquest report, Ext. Ka.10. He prepared sketch dead body, Police form No. 33, Form No. 13, report to R.I., letter to CMO, report to C.M.O. Exts. Ka. 11 to 16 respectively. He sealed the dead body and prepared sample seal, Ext. ka.17. The autopsy on the body of the deceased was performed in the hospital by Dr. Ram praksh Sharm, P.W.9 on 25-3-1992 at about 3-50 P.M. The I.O. visited the place of occurrence and prepared site-plan, Ext. Ka. 18. Thereafter the investigation was transferred to S.I. Krishna Thapa. On 25-3-92 the I.O. recorded the statements of injured Km. Madhu, and witness Smt. Lakshmi Devi. On completion of investigation the I.O. sumitted chare sheet, Ext. Ka. 19 against the accused persons.

4- On committal of accused to the court of Sessions, the Sessions Judge framed charges U/Ss 302, 452, and 307 I.P.C. against the accused. He pleaded not guilty to the charges and claimed his trial.

5- The prosecution in order to prove its case against the accused/appellant, examined 10 witnesses. Of these, P.W.1 Suresh Kumar is the complainant of the case. He is also an eye witness of the incident. This witness deposed that the accused Harish usually used to tease his daughters Km. Madhu aged 17

years, Km. Lata aged 13 years and Km. Sunita aged about 6 years. He and his wife had complained about this to the accused and had also reprimanded him many times, He further deposed that on 24-3-1992 at about 3-30 P.M. the accused suddenly entered in his house. At that time his wife Smt. Vidya Devi, mother Smt. Lakshmi Devi and daughter Km. Madhu were inside the house. When his wife Smt. Vidya asked the accused as to why he had entered in the house, the accused took out a knife from his pocket and gave knife blow on the back of his wife. When his mother Smt. Lakshmi Devi and daughter Km. Madhu tried to save Smt. Vidya Devi, the accused also assaulted Smt. Lakshmi Devi and Km. Madhu with the knife. The accused gave knife blows on the neck of Smt. Lakshmi Devi and on the forehead and hand of Km. Madhu. The complainant came out of his house and raised alarm and on hearing alarm his neighbour Ram Dayal, Pyare Lal etc reached at the spot. The witness further deposed that his daughter Km. Lata, had also returned from her school and at the door of his house the accused gave knife blows on the neck and other parts of the body of Km. Lata, due to which she was badly injured. Thereafter the accused ran towards Roadway Bus Stand with the knife. He carried his mother, wife and daughters in injured condition to the P.S. Tanakpur and from there they were carried to Tanakpur Government Hospital for treatment. Km. Lata on reaching at Tanakpur Hospital succumbed to her injuries. This witness further stated that he lodged the written report, Ext. Ka.1 at Tanakpur P.S.

6- P.W.2, Smt. Vidya Devi is the wife of complainant and the injured eye witness. This witness has corroborated the statement of P.W.1 Suresh Kumar.

7- P.W.3, Smt. Lakshmi, the mother of complainant is also injured eye witness. She has also fully supported the prosecution case and corroborated the statement of other eye witnesses.

8- P.W.4, Ram Dayal is the neighbour of the complainant. This witness on hearing the alarm of Suresh Kumar had reached at the spot and had seen the incident. This witness has deposed that on hearing the alarm of Suresh Kumar he reached at his

house. Pyare Lal had also reached there. He stated that accused Harish @ Gudda was having a blood-stained knife in his hand and was assaulting the wife of Suresh Kumar with the knife. When the mother and daughter of Suresh came to save his wife, accused also assaulted them with knife. This witness also deposed that he and Pyare Lal and others reprimanded the accused whereupon he came out of the house and when the another daughter of Suresh was returning from her school the accused also her at the door. Thereafter the accused ran towards Roadways Bus Stand with his knife.

9- P.W.5 Smt. Madhu, daughter of Suresh Kumar is also injured eye witness. She has also supported the prosecution case.

10- P.W.6, Pyare Lal, had also reached at the place of occurrence and had seen the entire incident. This witness has corroborated the statements of other eye witnesses.

11- P.W.7, Dr. R.H. Gokhale had medically examined the injured Smt. Lakshi and Km. Madhu. According to him on 24-3-1992 at about 4 P.M. he medically examined Smt. Lakshmi Devi and found the following injuries on her person:-

1- Incised would 15cm long and 1 cm wide with tapering ends, muscle deep, on the right side of neck. Fresh bleeding present.

2- Incised wound 4cm x .5 cm x muscle deep on the back of left forearm. Fresh bleeding. Tappering ends.

In the opinion of the doctor the injuries were fresh and caused by sharp object. Injuries were kept under observation. He also proved the injury report, ext. Ka.4.

On the same day at 4.05 P.M. this witness medically examined Km. Madhu and found the following injuries on her person:-

1- Incised wound 2 cm x .5cm x muscle deep on right side of forehead.

2- Incised wound 5cm x 1 cm on the outer side of left forearm in lower parts. Fresh bleeding. Tappering ends.

3- Incised wound 2cm x .5cm x muscle deep on the lower part of left forearm on inner side.

In the opinion of Medical Officer the injuries were fresh and caused by sharp object. Nature of injuries was simple. This witness proved the injury report, Ext. Ka.5.

This witness also opined that the injuries to the inured persons may be caused at about 3:30 P.M. on 24.3.1992.

12- P.W.8, Dr. S.S. Bora, Medically examined Smt. Vidya Devi on 24.3.92 at 10.05 A.M. when he was posted as Medical Officer in C.H.C. Khatima. He found the following injuries on her person:-

1- Incised (stab) wound 2cm x.5cm x depth, over back on left side lower part of back of chest left side 6cm away from mid line. Margins clean cut and sharp. Bleeding fresh. Wound directed downwards and outwards.

2- Incised wound 2.5cm x o.5cm x bone deep over back of left scapula, just below its upper margins, 8cm away from midline, margins clean cut and sharp. Bleeding fresh.

In the opinion of the doctor both the injuries were caused by sharp edged object. Duration fresh. This witness proved the injury report, Ext. Ka.6.

13. P.W. 9, Dr. Ram Prakash Sharma, had performed autopsy on the dead body of deceased Km. lata on 25.3.1992 at about 3.50 P.M. in the District Hospital Pilibhit. According to this witness eyes and mouth of the deceased were half open. Face was pale. Rigor mortis was present over upper part of body. He found the following ante-mortem injuries on her person:-

1- Incised wound 9cm x 3cm x trachea deep upto the upper border of cricoid cartilage and lower boarder of chin directing from right to left.

2- Incised wound oblique 2cm x 1cm x muscle deep in front of neck, middle 1cm below injury No.1. Clotted blood was present.

3- Incised wound 3cm x 1.5cm x muscle deep over right neck, 5cm below right ear. Clotted blood was present.

4- Incised wound 2cm x 1.5 cm x muscle deep on the left forearm back, 65cm above left writs. Clotted blood was present.

5- Incised wound oblique 1.5cm 0.8cm x muscle on the left side of abdomen, 7 cm above umbilicus. Clotted blood was present.

6- Lacerated abrasion 2cm long directing downwards inside abdomen front, 2cm outer from umbilicus.

7- Incised wound on left hand little finger on the upper surface. Clotted blood was present on the palm.

8. Incised wound 1.5cm x 1cm x muscle deep on the right hand in between thumb and index finger. Clotted blood was present.

On internal examination the doctor found that right chamber of heart was full whereas the left chamber was empty. In the large intestine gases and faecal matter was present. Semidigested food was present in the stomach. In the opinion of the doctor the death was caused due to shock and asphyxia due to ante mortem injuries. Injury No.6 may be caused by the upper part of knife and the other injuries may be caused by knife. He also opined that the injuries may be caused on 24-3-92 at 3.30kj P.M. He also proved the autopsy report, ext. Ka.7.

14- P.w.10, S.I. Krishna Thapa is the second Investigating Officer of the case. This witness has narrated about the steps taken during the investigation by her and the first Investigating Officer, S.I. Umesh Chandra Pant and proved the various papers prepared by her as well as S.I. Umesh Chandra Pant.

15- The accused in his statement U/S 313 Cr.P.C. denied the prosecution case and stated that the case has been fabricated against him. However, he did not adduce any evidence in his defence.

16- The Sessions Judge on assessment of prosecution evidence, held that the prosecution has been successful in proving the charges U/Ss 302, 307 and 452 I.P.C. leveled against the accused/appellant and accordingly convicted and sentences him to undergo imprisonment for life U/S 302 I.P.C.; five years; R.I. U/S 307 I.P.C. and one year’s R.I. U/S 452 I.P.C.

17- Feeling aggrieved, the accused/appellant Harish @ Gudda (hereinafter called the appellant) filed appeal before this Court.

18- We have heard the learned Amicus Curiae, learned G.A. and perused the record.

19- Learned counsel for the appellant has first of all argued that the First Information Report in this case is ante-timed. It has been submitted that the incident is alleged to have taken place at 3-30 P.M. on 24-3-1992, while the First Information Report was lodged on 24-3-1992 at P.M. Our attention has been invited towards the medical examination report of the injured persons, in which it is mentioned that Smt. Lakshmi Devi P.W.3 was medically examined at 4 P.M. while Km. Madhu, P.W.5 was medically examined at 4.05 P.M. on the same day, therefore, if these witnesses, who are said to have sustained injuries on their person during the course of occurrence, were medically examined at 4 P.M. and 4.05 P.M. respectively, then how the First Information Report could have been lodged at 4 P.M. and this circumstance clearly goes to show that the First Information Report is ante-timed.

20- We fail to appreciate this argument advanced by the learned counsel for the appellant as P.W.1 Suresh Kumar has clearly deposed in his evidence before the court that immedicately after the occurrence he took all the inured persons to P.S. Tanakpur and from there the injured persons were taken to Government Hospital, Tanakapur. He has stated that his daughter Lata succumbed to injuries in the way from P.S. Tanakpur to Government Hospital. This witness has also deposed that he got the First Information Report scribed by one Javed Hussain and thereafter handed it over to the Moharir of the Thana for lodging the report. The explanation given by this witness appears to be quite natural as the wife. daughters and mother of the informant had sustained serious injuries on their persons therefore it was natural on the part of the informant to take the injured witnesses first to Police Station and thereafter immediately to the Government Hospital for their medical treatment. The time recorded as 4 P.M. in the medical examination report of Smt. Lakshmi Devi may be a result of difference of 5 to 10 minutes in the watch of the doctor but any how this circumstance is not

going to discredit the entire prosecution case. The natural version has been advanced by the prosecution and this circumstance, that the injured were immediately taken to Police Station and thereafter to Government Hospital and they were immediately medically examined by the doctor, shows that the First Information Report is quite prompt and there was no occasion available with the informant to fabricate a false case against the appellant. It is clear from the evidence that when also taken immediately to the Government Hospital from the Police Station for their medical treatment, keeping in view their serious condition, the doctor must have immediately provided the medical treatment to the injured as soon as they were taken to the Hospital. Therefore, there is no point of confusion on account of mentioning the time in the medical examination reports of the injured witnesses at 4 P.M. and 4.05 and the same is not going to suggest that the First Information Report can be said to be ante-timed.

21- Learned counsel for the appellant has also invited our attention towards the statement of P.W.1 Suresh Kumar in cross-examination, in which he has stated that he got the report scribed by Javed Hussain on the second and third day of the incident. Therefore, on the basis of this deposition, learned counsel for the appellant has tried to convince the court that the F.I.R. is certainly ante-timed.

22- Again we fail to appreciate this argument. In case if we go through the entire evidence of P.W. 1, then the only conclusion can be drawn that the First Information Report was lodged by P.W.1 Suresh Kumar immediately at Police Station, Tanakpur. This part of the deposition made by Suresh Kumar which has been pointed out by the learned counsel for the appellant may be a result of confusion created in the mind of the witness. It is important to mention here that the incident in this case is alleged to have taken place in the year 1992 while the statement of this witness was recorded after about eight years of the incident, therefore, these minor contradictions are bound to occur in the evidence of the

witness and we are of the view that these type of contradictions do not effect the genesis of the prosecution case in any manner.

23- Learned counsel for the appellant has further argued that the appellant did not have any motive to commit this crime and the motive suggested by the prosecution is very weak. It is quite clear from the evidence of the witnesses that the appellant had an evil eye on the daughters of the informant and the informant had also asked the appellant not to repeat his activities. P.W.1 in his deposition before the court has clearly stated that his daughters had complained against the appellant several times to him and the informant and his wife had also asked the appellant not to evetease his daughters. The informant has also stated that he also scolded the appellant so many times, P.W.2, Smt. Vidya, who is the wife of the informant, has also stated that the samething in her deposition before the court. She has also stated that the appellant Harish had an evil eye on her daughters and he used to evetease them. She has stated that she and her husband had scolded the appellant several times. P.W.5, Madhu is an injured witness and she has also stated that the appellant is an ill-reputed person and often evetease her had her sisters. She has also stated that she made complaints to her mother in this regard and her mother also scolded the appellant several times. Therefore, keeping in view the depositions of all the witnesses, it is quite clear that the appellant was involved in eveteasing the daughters of complainant and he was scolded by the informant and his wife several times in this regard, hence it was sufficient motive available to the appellant to commit this crime. It is worthy to mention here that the appellant immediately after entering in the house of the complainant assaulted Smt. Vidya Devi wife of complainant first and when Madhu and her grand mother Smt. Lakshmi wanted to intervene then the appellant also caused injuries on their person and thereafter when the appellant came out of the house of informant he met with Km. Lata, who was returning from her school, then he also caused several injuries on her person with the knife, he was holding in his hand at the time of the incident. Km.

Lata sustained serious injuries on he person and she succumbed to the injuries lateron while being taken to the hospital.

24- learned counsel for the appellant has further argued that there are material contradictions in the ocular version advanced by the prosecution. It has also been stated that the ocular version does not find any corroboration with the medical evidence adduced by the prosecution.

25- In order to visualize the gravity of the argument advanced by the learned counsel for the appellant, we have thoroughly scrutinized the evidence on record and we found that there are three inured eye witnesses in this case. P.W.2, Vidya is the wife of the informant Suresh kumar and she has sustained two incised wounds, one on the left side lower part of back of chest and another on the back of left scapula. This witness was medically examined on 24-3-1992 at 10-05 P.M. and the doctor opined that both the injuries were caused by sharp edged object and the duration of the injuries was found to be fresh. The nature of the injuries on the person of Smt. Vidya P.W.2 is such that it could not have been manufactured or fabricated in any manner. The presence of this witness at the place of the occurrence cannot be doubted in any manner and this witness has specifically attributed the role of giving knife blows by the appellant to her as well as other injured eye witnesses and the deceased and we do not find any reason to disbelieve the testimony of this witness.

26- P.W.1, Suresh Kumar is also an eye witness of this occurrence, althought he has sustained no injury on his person during the course of the occurrence, but presence of this witness at the place of the occurrence appears to be natural. This witness is a Rickshaw-puller and lives in the neighbourhood of the appellant. The ocular version given by this witness finds full sport by the depositions of the other injured eyewitnesses, who are the members of his family and were present inside the house when the incident took place.

27- Next injured eyewitness is P.W.3 Smt. Lakshmi Devi who is the mother of informant Suresh Kumar and the injury report of this witness shows that she sustained two incised wounds on her

person, one muscle deep on the right side of neck and another muscle deep on the back of left arm. The doctor found that both the injuries were fresh and were caused by sharp edged object. Keeping in view the injuries on the person of Smt. Lakshmi it can be safely inferred that she was also present at the place of the occurrence. She has also attributed the specific role of causing knife blows on her person as well as on the person of the other injured eyewitnesses including Km. Lata, who succumbed to her injuries later on. We do not find any material contradiction or omission in the statement of Smt. Lakshmi Devi injured eye witness. Therefore we also do not find any reason to disbelieve the testimony of this injured eyewitness.

28- The another important inured eye witness is Madhu P.W.5, who is the daughter of the informant Suresh kumar. This witness has specifically stated that the appellant had an evil eye at her and her sisters. She has also stated that the appellant used to evetease her and her sisters and she had made complaint in this regard to her parents for which her parents has scolded the appellant several times. This witness was also present inside the house at the time of the occurrence and she sustained three incised wounds on her person during the course of the occurrence. One injury was found on the right side of her forehead, another was found on the outer side of left forearm and the third injury was found on the lower part of left forearm. The doctor opined that all these injuries were fresh and were caused by sharp edged object. It is worthy to mention here that the injuries on the person of Madhu were on forehead, forearm and this type of injuries show that certainly this witness must have tried to intervene when the appellant was giving knife blows on the persons of Smt. Vidya Devi, mother of this injured witness. This witness has clearly deposed that she and her grand mother Smt. Lakshmi Devi tried to intervene when the appellant was giving knife blows on the persons of Smt. Vidya Devi, and the appellant therefore caused injuries on their person. The presence of this witness also appears to be quite natural in the house when the incident has taken place. Therefore, keeping in

view the ocular version advanced by the prosecution, it is quite clear that in this case the appellant has caused the injuries by the knife on the person of three injured eye witnesses who were present inside the house at the time of the occurrence. The testimony of the injured eyewitnesses cannot be easily discarded and their presence also cannot be doubted easily, unless some serious infirmity is pointed out in their deposition. We are of the view that we could not find any serious contradiction, infirmity or omission in the evidence of the injured eyewitnesses, therefore, there is no reason to disbelieve the ocular version advanced by the prosecution.

29- As far as the medical version is concerned, the doctor in the medical examination reports of all the injured witnesses has clearly opined that the injuries could have been caused at the alleged time and by the sharp edged weapon, like knife. It is the case where the role has been attributed to this sole appellant and the injuries on the person of the eye witnesses are indicative of the fact that the incident had taken place certainly in the manner as has been alleged by the prosecution.

30- As far as the post mortem report of Km. Lata is concerned, it reveals that the autopsy on the body of Km. Lata was conducted on 25-3-1992 at about 3.50 P.M. and the doctor found seven incised wounds on the person of the deceased including one lacerated abrasion. The doctor opined that the death was caused due to shock and as a result of ante mortem injuries. The doctor also opined that the lacerated abrasion might have been caused by the upper part of the knife. The doctor also opined that the injuries could be caused on 24-3-1992 at 3.30 P.M. The injuries on the person of Km. Lata show that she was mercilessly given repeated knife blows on her person and the medical version therefore completely supports the ocular version as the eyewitnesses have stated that after assaulting Madhu, Smt, Vidya and Smt. Lakshmi when the appellant was leaving the place of the occurrence, he found Km. Lata returning to her house from the school and immediately caught hold her and gave repeated knife blows on her persons due to which she succumbed to injuries later on. This

incident of giving knife blows on the person of Km. Lata had also occurred in front the house of the informant and the presence of the witnesses at that place was also natural. We are therefore of the view that the ocular version finds complete corroboration with the medical evidence and there is no reason to disbelieve the prosecution case.

31. On the basis of the assessment of the evidence on record, we come to the conclusion that the appellant has caused the injuries with intention to commit the murder of Smt. Lakshmi Devi Smt. Vidya Devi, and Km. Madhu. The appellant has also caused the injuries on the person of Km. Lata on account of which she died. It is therefore established that the appellant has committed the murder of Km. Lata as well as caused injuries on the person of injured eyewitnesses with an intention to commit their murder after entering inside the house of the complainant. The trial court has rightly convicted and sentenced the appellant and we do not find any ground to interfere in the impugned judgment and order dated 9-10-2001 passed by the trial court.

32. The appeal thus fails. The impugned judgment and order dated 9-10-2001 passed by the Sessions Judge Udham Singh Nagar, convicting the appellant U/Ss 302, 307 and 452 I.P.C. and sentencing him to undergo imprisonments for life U/S 302 I.P.C.; five years R.I. U/S 307 I.P.C. and one year's R.I. U/S 452 I.P.C.is liable to be confirmed.

33- Accordingly the appeal is dismissed. The impugned judgment and order dated 9-10-2001 is confirmed.

34- The appellant is in jail. He shall serve out the sentence awarded against him.

35- Let the lower court record be sent back to the trial court.

(B.C.Kandpal, J.) **(P.C. Verma, J.)**

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